IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

W.A.No.2800 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).NO.485/2007 DATED 23/07/2007

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APPELLANTS: RESPONDENTS:-

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1. STATE OF KERALA,
   REP. BY THE SECRETARY TO GOVERNMENT,
   DEPARTMENT OF TAXES,
   GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF EXCISE,
   EXCISE COMMISSIONERATE,
   THIRUVANANTHAPURAM.

3. THE ASSISTANT EXCISE COMMISSIONER,
   KOTTAYAM.

BY GOVERNMENT PLEADER SRI.M.P.SREEKRISHNAN.

RESPONDENTS: PETITIONERS:-

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1. A.J.JOSEPH,
   S/O.LATE JOSEPH,
   ALANCHERRY HOUSE,
   VEEZAPRA P.O.,
   RAMANKARI,
   KUTTANAD TALUK,
   ALAPPUZHA DISTRICT.

2. THOMAS JOSEPH,
   S/O.LATE JOSEPH,
   ALANCHERRY HOUSE,
   VEEZAPRA P.O.,
   RAMANKARI,
   KUTTANAD TALUK,
   ALAPPUZHA DISTRICT.

BY ADV.SRI.N.RAGHURAJ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2800 of 2007

Dated, this the 6th day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

Aggrieved by the orders passed by the learned Single Judge in W.P.(C) No.485 of 2007 dated 23rd July, 2007, the State Government is before us in this writ appeal.

2. The respondents in this appeal were the petitioners in W.P.(C) No.485 of 2007. The only relief sought for in the writ petition is to direct the appellants herein to implement the order passed by the State Government (Ext.P2) pursuant to Ext.P1 judgment.

3. The learned Single Judge taking note of the previous history of the case, has directed the State Government to implement Ext.P2 order as early as possible, at any rate within two months from the date of receipt of a copy of this Court's order.

4. aggrieved by the said order passed by the learned Single Judge, the respondents in the writ petition have presented this writ appeal.

5. Mr.M.P.Sreekrishnan, learned Government Pleader appearing for the Revenue, would submit that the interest that is awarded by this Court Court is excessive, and therefore, the interest portion of the order passed by the learned Single Judge requires to be modified.

6. In our opinion, the State Government ought not to have filed this writ appeal. The relief sought for in the writ petition is to direct the respondents in the writ petition to implement Ext.P2 order passed by the State Government pursuant to Ext.P1 judgment of this Court. The State Government while

passing Ext.P2 order had stated that the amounts shall be refunded to the petitioners with 18% interest per annum. Having said so, the State Government now cannot wriggle out of the said order by saying that the interest portion of that order requires to be modified. In view of the above, we fails to understand how the State Government could file this writ appeal against the orders passed by the learned Single Judge.

7. We are of the opinion, that the learned Single Judge has not committed any error whatsoever which would call for our interference. Therefore, the writ appeal requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns